IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.275 OF 2007

The Commissioner of Income Tax .. Appellant.

Versus

Samarth Sahakari Sakhar
Karkhana Limited .. Respondent.

Mr.B.M. Chatterjee with Mrs.P.P. Bhosale for the appellant.

Mr.S.N. Inamdar with Mr.A.K. Jasani for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 8TH OCTOBER, 2007.

P.C. :

1. Admit on the following questions of law.

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to Harvesting and Transporting Contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which assessee is giving huge interest to the financial institutions. Thus, it was nothing but a diversion of borrowed funds for non-business purpose ?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in following the decision in the case of CIT & Another Vs. Radico Khaitan Ltd., reported in (2005) 274 ITR 354 (All.), wherein the issue involved before the Court was totally different with that of in the case of above assessee

society ?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that Bakshish payment made by the assessee society to Harvesting and Transport labourers was out of commercial expediency, such payments are purely voluntarily, based on sweet will of assessee society and being over and above the agreed price of contracts, these do not form the part of business expenditure ?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing to allow the claim in respect of delayed payment of PF, if it has been paid upto the date of filing of Return of Income ignoring the fact that said amendment to the provisions of Section 43B of the I.T. Act was made w.e.f. 01/04/2004 i.e. from A.Y. 2004-05 and prior to that period, such contribution is to be allowed only when the same is paid before the due date of respective month.

2. Question No.1 pertains to advances to Harvesting and Transporting Contractors. This issue has been answered in favour of the assessee and against the Revenue by our Judgment dated 17th September, 2007 in Income Tax Appeal No.273 of 2007 (The Commissioner of Income-tax V/s. Samarth Sahakari Sakhar Karkhana Limited).

3. Question No.3 is answered pertains to Bakshis payment. This issue has been answered in favour of the assessee and against the revenue by our judgment dated 17th September, 2007 in Income Tax Appeal No.273 of 2007 (The Commissioner of Income-tax V/s. Samarth Sahakari Sakhar Karkhana

Limited).

4. Question No.4 is answered in favour of the Revenue and against the assessee by our judgment dated 8th October, 2007 in Income Tax Appeal No.256 of 2004 and other appeals (The Commissioner of Income-tax V/s. Godavari (Mannar) Sahakari Sakhar Karkhana Limited).

5. In the light of above, question No.2 as raised would not arise. In the light of that, questions Nos.1 and 3 are answered in the affirmative in favour of the assessee and against the revenue. Question No.4 is answered in the negative in favour of the revenue and against the assessee.

6. The Appeal disposed of accordingly.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)